IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 213 OF 1998

Dhondiram Mahadeo Lanjekar,
residing at 909, Kapad Peth,
Main Road, Lanjekar Mithai
Bhandar, Sangli ...Petitioner

Versus

1. Chandrashekhar Bhalchandra
Gore, residing at 571,
Gao Bhag, Sangli.

2. The State of Maharashtra,
(Notice to be served on
the Govt. Pleader, High
Court, Appellate Side,
Mumbai.) ...Respondents.

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Smt. Anjali Helekar, counsel for Petitioner
Mr. S.V.Pitre, counsel for Respondent No.1.
Mr. A.H. Palekar, A.G.P. for Respondent No.2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 22ND FEBRUARY, 2005

ORAL JUDGMENT:-

1. Writ petition No.1359 of 1991 filed by the present respondents, came to be decided in terms of the consent terms and the present petitioner was the respondent in the said petition. In terms of the consent terms, signed by both the parties on 2.4.1996, they i.e. the present petitioner (buyer) and the respondent (developer) signed separate undertakings on that day itself declaring that they were bound by the consent terms. The developer was to build the building as per the approved plan and it

was of two floors, ground and first. The height of each floor was to be 9 feet. The premises agreed to be sold to the buyer were marked in the map by letters A B C D. The buyer had also agreed to deliver the possession of the suit premises to the developer on or before 1.5.1996. The developer was to construct the building and hand over the possession of the same to the buyer within six months. There is no dispute that the developer handed over the possession of the new shop to the petitioner on 18.11.1996.

2. In this contempt petition it is alleged that the construction carried out was not in keeping with the original plan sanctioned by the Municipality under Resolution No. 118 dated 11.10.1995 and in fact the said plan was modified and was approved under term No. 239/1 dated 11.3.1997. The petitioner argues that the building constructed has a godown in the basement and this is contrary to the sanctioned plan dated 11.10.95 which formed part of the undertaking furnished before this Court. It is further alleged that there was provision of one room in the original plan and the same was not below the premises of the petitioner. The height of the premises is less than 9 feet which is also in breach of the consent terms. Walls between the room allotted to the petitioner and the room in possession of the landlord is of tin and

as a result of which the same cannot be used by the petitioner for the purposes such as striking a nail or putting fixtures on the said wall.

3. Affidavit in reply has been filed by the developer-landlord and it has been stated that the newly constructed premises were handed over to the petitioner on 18.11.1996, he has signed the possession receipt and has been conducting his business in the newly constructed structure since then. Draft of the sale deed for the purposes of executing conveyance was also given to the petitioner in December, 1996, no grievance was made by the petitioner regarding the deficiencies as alleged, in the suit premises, when the same were handed over to him on 18.11.96. So also when the possession was handed over to the petitioner, he got the area measured through his architect and only thereafter, he signed the possession receipt dated 18.11.1996. It is further stated that fresh plan was submitted to the Municipal Council and it was sanctioned on 11.3.1997. However, the built up area and number of floors and the height above the ground level was maintained. Even when the petitioner had taken possession on 18.11.1996 he was aware that the basement was constructed below the structure and the tin walls were also standing. He did not raise any objection and kept mum for more than one year.

4. This contempt petition came to be filed on 27.3.1998 while the possession of the newly constructed premises was taken over by the petitioner on 18.11.1996. There is nothing on record to show that the petitioner had ever raised any grievance regarding the allegations made in this contempt petition before he filed the contempt petition. The contempt petition was even otherwise barred by limitations as provided under Section 20 of the Contempt of Courts Act, 1971 and it ought to have been rejected at the threshold.

5. The petitioner has accepted the premises unconditionally on 18.11.1996 and also filed Regular Darkhast No.138 of 1999 for the execution of the decree confirmed by this Court and therefore, he cannot now claim that the respondent-developer/ landlord committed contempt, in as much as he willfully disobeyed the order passed by this Court in terms of the consent terms and acted in breach of the undertaking furnished before this Court.

6. In the result, this petition fails and the same is hereby dismissed. Rule discharged.

7. Certified copy is expedited.